

## OFFICE OF THE CITY ATTORNEY

DATE 3/17/09

HB 228

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March 17, 2009

RE: House Bill 228

Chairman Perry and Honorable Members of the Senate Judiciary Committee:

My purpose in writing is to request you to vote Do Not Pass Senate Bill 228. I have prosecuted offenders on behalf of the people of the state of Montana for over 20 years. I am the Assistant City Attorney for the City of Missoula.

If enacted, Senate Bill 228 will make three major changes in the way violent offenders are investigated and prosecuted. First, HB 228 changes the duty of who must investigate a claim of self defense and who must prove, during a trial, that self defense was not an issue. Second, HB 228 decriminalizes carrying a concealed weapon. Third, HB 228 states that waiving a gun in the air for a "harmless defensive purpose", so long as the gun is not pointed at a person, is not an offense.

The state should fully investigate criminal offenses. The state should not have to investigate all possible defenses nor should the state have to disprove defenses. In any criminal case, the state must prove, beyond a reasonable doubt, all elements of the offense. Under current law, self defense must be raised by an offender who must present sufficient evidence to raise a reasonable doubt of his guilt. State v. Miller, 1998 MT 177, para 23 (1998). HB 228 requires law enforcement to investigate self defense if it "appears" or it is "alleged" that self defense is an issue. HB 228 also shifts the burden of proof to disprove the claim of self defense to the people of the state of Montana.

This bill will conditionally eliminate carrying a concealed weapon as an offense. Carrying a concealed weapon is currently an offense in Montana. The gravamen of that offense is that 1. Having a weapon concealed upon one's person can quickly escalate a minor disagreement into tragic, even lethal violence. 2. It is a simple procedure to get a concealed weapon permit and folks who want to carry a concealed weapon can complete that procedure. HB 228 decriminalizes carrying a concealed weapon unless the offender uses the weapon to commit another offense at the same time.

A person who waives a gun in the air may cause other people to be terrified. HB 228 states that "holding a firearm in a position so that the firearm does not point directly at another person" may not be charged as an offense. One must assume that a person could then waive a firearm up in the air across from a school, across from a government building or across from their estranged wife's home. As long as the firearm is shown for a "harmless defensive purpose" and not pointed directly at another person, brandishing it "needs no justification for the display". This change in the law would severely hamper law enforcement from taking proactive action in extraordinarily frightening and volatile situations.

These changes are not needed in Montana's laws. These changes will hamper law enforcement and prosecutors in investigating and prosecuting violent offenders. These changes will endanger Montanans. Please vote Do Not Pass on HB 228

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith L. Wang", with a long horizontal flourish extending to the right.

Judith L. Wang  
Assistant City Attorney